

REMARKS

By this amendment, claims 1-4, 7-11, 14-18, 21-25, 28-32, and 35-40 are pending, in which claims 5, 6, 12, 13, 19, 20, 26, 27, 33, 34, 41, and 42 were previously canceled without prejudice or disclaimer. No new matter is introduced.

The Final Office Action mailed March 17, 2010 rejected claims 1, 8, 15, 22, 29, and 36 under 35 U.S.C. § 112, second paragraph, as being indefinite, claims 1-4, 7-11, 14-18, 21-25, 28-32, and 35-40 as obvious under 35 U.S.C. § 103(a) based on *Kitchen et al.* (US 6,289,322) in view of *Gafney* (“Practical Merchandising Math”; 1996, pages 12-16, 19, 20).

The rejection of claims 1, 8, 15, 22, 29, and 36 under 35 U.S.C. § 112, second paragraph, is traversed.

The Final Office Action asserted that the recitation of “calculating...a discount amount based upon the invoice amount; determining whether criteria for receiving the discount amount are satisfied...wherein the criteria in the determining step include **maintaining a zero outstanding charge** by the customer” is indefinite because “[i]f there are zero outstanding charges, then the invoice amount should be zero. Does applicant intend to claim that discount eligibility is determined by whether there are any past due charges on an account, charges incurred during previous billing cycle but unsatisfied by the debtor?” (Final Office Action-page 2).

Clearly, the claims are not indefinite because the Examiner understands, as anyone of ordinary skill in the art would understand, that an “outstanding” charge is a past due charge incurred during a previous billing cycle, as opposed to a current charge on the current billing cycle. If the charge is current, it is not “outstanding.” Paragraph [08] of the instant

specification, for example, recites that “[a]ny EPD discount is based on the **current** invoice charges” and that “early payment discounts **do not apply to past due amounts**, and preferably apply only if the user submits payment for the full amount” [emphasis added]. More importantly, it is clearly disclosed, at paragraph [37] of the instant specification, that the field 406 in the billing statement depicted in Fig. 4A is populated with “the total **outstanding charges amount (unpaid balance)**.” Thus, as defined in the disclosure, the “outstanding charges amount” is the “unpaid balance.” Accordingly, the claim language “calculating...a discount amount based upon the invoice amount; determining whether criteria for receiving the discount amount are satisfied...wherein the criteria in the determining step include maintaining a **zero outstanding charge** by the customer” is clear and definite in its meaning.

Therefore, since there is no reasonable basis for concluding that claims 1, 8, 15, 22, 29, and 36 are indefinite under 35 U.S.C. § 112, second paragraph, the Examiner is respectfully requested to withdraw this rejection.

The rejection of claims 1-4, 7-11, 14-18, 21-25, 28-32, and 35-40 under 35 U.S.C. §103(a) is traversed.

The features of “determining whether criteria for receiving the discount amount are satisfied for a corresponding customer,” selectively applying the discount amount based upon the determining step,” and “wherein the criteria in the determining step include maintaining a zero outstanding charge by the customer,” or similar features, are recited in independent claims 1, 8, 15, 22, 29, and 36.

The Final Office Action contends that these features are disclosed in *Gafney* in that the determination step is the determination of whether payment has been made before the last day

permitted for the discount, with the criteria being payment before the deadline. Assuming, *arguendo*, that this is a reasonable interpretation of *Gafney*, which it is not, the reference still does not disclose or suggest that the criteria in the determining step includes “maintaining a zero outstanding charge by the customer.”

There is no disclosure or suggestion in *Gafney* of the determining step including “maintaining a zero outstanding charge by the customer.” *Gafney* discloses that a cash discount may be given if an invoice is paid early in order to provide an incentive to the customer to remit early payment, before a predetermined due date. But the discount in *Gafney* is based solely on the customer paying before the predetermined date. There is no disclosure or even a glimmer of a suggestion in *Gafney* of setting criteria for determining **whether a discount will be applied, other than an early payment being made, and that that criteria includes the customer “maintaining a zero outstanding charge by the customer.”** In *Gafney*, every customer is eligible for the early payment discount, so long as the customer sends payment before the end of the predetermined time period. But, unlike the instant claimed subject matter, *Gafney* does not employ a criteria, including “maintaining a zero outstanding charge by the customer” to determine if the customer is eligible to participate in the discount for early payment program. The subject matter of the instant claims requires that a customer maintain a zero outstanding charge before that customer is eligible for the discount. If the customer is not so eligible, then early payment will not net the customer a discount. This is contrary to the disclosure of *Gafney*.

Kitchen et al., of course disclose no discounts of any kind, let alone based on the claimed criteria, and do not fill in the gaps of *Gafney*. Accordingly, no *prima facie* case of obviousness has been established with regard to the claimed subject matter.

Responsive to these arguments, the Final Office Action, at pages 7-8, cites page 14 of *Gafney* regarding the encouragement of early payments with a sliding scale of discounts, asserting that a discount of 5% applied if a payment is made within 30 days, is a teaching of “setting a criteria for determining whether a discount will be applied.”

It is not necessarily disputed that *Gafney* encourages early payment with a sliding scale of discounts based on when payment is made, but to the extent there is any “setting a criteria” at all, the criteria for the discount is merely early payment. This falls short of a disclosure of “wherein the criteria in the determining step include maintaining a zero outstanding charge by the customer,” as claimed. Even if *Gafney* can reasonably be interpreted to disclose setting a criteria in employing early payment as a criteria for a discount, the criteria does not “include **maintaining a zero outstanding charge** by the customer.” That is, *Gafney* is silent with regard to using a zero outstanding charge as a criterion for earning a discount.

At page 8 of the Final Office Action, it is argued that since determination of a discount in *Gafney* is based on the date of receipt of payment, if the payment is not received by the indicated final date of payment, the payor is ineligible for the discount. However, this is merely a restatement of *Gafney*’s criteria for the discount, i.e., that the payment must be made within a set time period in order to qualify for the discount. It bears no relevance to the payor, or customer, “**maintaining a zero outstanding charge**,” which, as defined in the instant disclosure, and explained above, relates to an unpaid balance, or past due charges; not with current charges, or a current billing cycle, with which *Gafney* is concerned.

Alternatively, the Final Office Action maintains that *Gafney* discloses criteria including the customer maintaining a zero outstanding balance “as the customer must submit payment in order to obtain the discount. Examiner asserts that *Gafney*’s statement that ‘a discount of 5%

may be deducted if payment is made within 30 days' indicates full payment, rather than a partial payment. Full payment satisfying the amount owed would thereby satisfy the criteria of maintaining a zero outstanding charge on the account."

Respectfully, this alternative interpretation is also flawed. Full payment by the customer in this scenario would result in a zero outstanding charge, to be sure, but the eligibility of the customer to receive the discount is not based, in any part, on the customer maintaining a zero outstanding charge. The customer's eligibility for receiving the discount in *Gafney* is based **solely** on when the customer pays the bill. The customer in the system of the instant invention, as claimed, will also only receive a discount if the bill is paid early but the **customer is not eligible for that discount unless the customer also maintains a zero outstanding charge**, i.e., there must be no unpaid balance due. That is, the customer in the system of the instant invention, in addition to paying early, must also meet the criterion of maintaining no unpaid balances from previous billing cycles, i.e., "determining whether criteria for receiving the discount amount are satisfied for a corresponding customer... wherein the **criteria** in the determining step **include maintaining a zero outstanding charge** by the customer."

Since neither *Kitchen et al.* nor *Gafney*, or the combination thereof, discloses or suggests the claim feature of "determining whether criteria for receiving the discount amount are satisfied for a corresponding customer... wherein the **criteria** in the determining step **include maintaining a zero outstanding charge** by the customer," no *prima facie* case of obviousness has been established.

Therefore, the Examiner is respectfully requested to withdraw the rejection of claims 1-4, 7-11, 14-18, 21-25, 28-32, and 35-40 under 35 U.S.C. § 103(a).

Therefore, the present application overcomes the rejections of record and is in condition for allowance. Favorable consideration is respectfully requested. If any unresolved issues remain, it is respectfully requested that the Examiner telephone the undersigned attorney at (703) 519-9952 so that such issues may be resolved as expeditiously as possible.

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 504213 and please credit any excess fees to such deposit account.

Respectfully Submitted,

DITTHAVONG MORI & STEINER, P.C.

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Date

/Phouphanomketh Ditthavong/
Phouphanomketh Ditthavong
Attorney/Agent for Applicant(s)
Reg. No. 44658

Errol A. Krass
Attorney for Applicant(s)
Reg. No. 60090

918 Prince Street
Alexandria, VA 22314
Tel. (703) 519-9952
Fax (703) 519-9958